

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: March 2, 2001 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "*Agreement*." The Parties to this *Master Agreement* are the following:

Name: "Dynergy Power Marketing, Inc., acting as agent for Cabrillo Power I LLC, El Segundo Power LLC, and Long Beach Generation LLC" or "Party A"

All Notices: Dynergy Power Marketing, Inc.

Street: 1000 Louisiana, Suite 5800  
City: Houston, TX Zip: 77002-5050

Attn: Contract Administration  
Phone: (713) 507-3860 or (713) 767-6281  
Facsimile: (713) 767-5931  
Duns: 88-478-0743  
Federal Tax ID Number: [REDACTED]

### Invoices:

Attn: Accounts Payable - Power  
Phone: (713) 507-3795  
Facsimile: (713) 767-6253

### Scheduling:

Attn: Vice President, Energy Trading  
Phone: 1-800-557-9099/8900 or (713) 507-6502  
Facsimile: (713) 507-6504

### Payments:

Attn: Accounts Receivable  
Phone: (713) 507-3495  
Facsimile: (713) 767-6253

Name: State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("California Department of Water Resources" or "Party B")

All Notices: California Department of Water Resources

Street: 1416 Ninth Street  
City: Sacramento, California Zip: 95814

Attn: Executive Manager Power Systems  
Phone: (916) 653-5913  
Facsimile: (916) 653-0267  
Duns:  
Federal Tax ID Number: [REDACTED]

### Invoices:

Attn: Contracts Payable  
Phone: (916) 653-6404  
Facsimile: (916) 654-9882

### Scheduling:

Attn: Chief Water and Power Dispatcher  
Phone: (916) 574-2693  
Facsimile: (916) 574-2569

### Payments:

Attn: Cash Receipts Section  
Phone: (916) 653-6892  
Facsimile: (916) 654-9882

Wire Transfer:



Wire Transfer:



**Credit and Collections:**

Attn: Credit Director  
Phone: (713) 507-6810767-8483  
Facsimile: (713) 507-3786767-8772

**Credit and Collections:**

Attn: Deputy Controller  
Phone: (916) 653-6148  
Facsimile: (916) 653-8230

With additional Notices of an Event of Default or  
Potential Event of Default to:

Attn: Vice President and Assistant General Counsel  
Phone: (713) 507-3736  
Facsimile: (713) 507-6986

With additional Notices of an Event of Default or  
Potential Event of Default to:

Attn: Deputy Controller  
Phone: (916) 653-6148  
Facsimile: (916) 653-8230

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following  
provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff _____	Dated _____	Docket Number _____
Party B Tariff	Tariff _____	Dated _____	Docket Number _____

**Article Two**

Transaction Terms and Conditions

[\*] Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four**

Remedies for Failure  
to Deliver or Receive

[\*] Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five**

Events of Default; Remedies

☐ Cross Default for Party A:

☐ Party A: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ Cross Default for Party B:

☐ Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

☐ \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

**5.6 Closeout Setoff**

☐ Option A (Applicable if no other selection is made.)

☐ Option B – Affiliates shall have the meaning set forth in the  
Agreement unless otherwise specified as follows: \_\_\_\_\_

[\*] Option C (No Setoff)

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**Article 8**

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- ☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
[\*] Option C Specify: See Section 8 (Credit) of Transaction 2001A

(b) Credit Assurances:

- [\*] Not Applicable  
☐ Applicable

(c) Collateral Threshold:

- [\*] Not Applicable  
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ \_\_\_\_\_

Party B Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

- [\*] Not Applicable  
☐ Applicable

If applicable, complete the following:

☐

☐ Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A  
☐ Option B Specify: \_\_\_\_\_  
☐ Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

☐ [\*] Not Applicable  
☐ Applicable

(c) Collateral Threshold:

☐ [\*] Not Applicable  
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ \_\_\_\_\_

Party A Rounding Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

☐ [\*] Not Applicable

☐ Applicable

If applicable, complete the following:

☐

☐ Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party A:

Guarantee Amount: \_\_\_\_\_

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**Article 10**

Confidentiality

☐ [\*] Confidentiality Applicable

If not checked, inapplicable.

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**Schedule M**

☐ Party A is a Governmental Entity or Public Power System

☐ [\*] Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

**Other Changes**

Specify, if any: See attached Special Provisions

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A: Dynegy Power Marketing, Inc., acting as  
agent for Cabrillo Power I LLC, El Segundo  
Power LLC, and Long Beach Generation LLC

Party B: California Department of Water Resources,  
with respect to the Department of Water Resources  
Electric Power Fund Separate and apart from its  
powers and responsibilities With respect to the State  
Water Resources Development System.

By: 

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: 

Name: \_\_\_\_\_

Title: DIRECTOR

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and

**development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.**

**SPECIAL PROVISIONS TO THE  
EEI-NEM MASTER POWER PURCHASE AND SALES AGREEMENT**

DYNEGY POWER MARKETING, INC., acting as agent for Cabrillo Power I LLC, El Segundo Power LLC, and Long Beach Generation LLC, a Texas corporation and CALIFORNIA DEPARTMENT OF WATER RESOURCES, DEPARTMENT OF WATER RESOURCES ELECTRICITY POWER FUND SEPARATE AND APART FROM ITS POWERS AND RESPONSIBILITIES WITH RESPECT TO THE STATE WATER RESOURCES DEVELOPMENT SYSTEM hereby agree effective as of the second day of March 2001, to the following Special Provisions ("Special Provisions") to Version 2.1 (modified 4/25/00) of the EEI-NEM Master Power Purchase & Sale Agreement (the "Agreement") dated and effective as of March 2, 2001. Unless specifically agreed otherwise in a Confirmation Letter, the Agreement, as modified by these Special Provisions, shall apply to all transactions for the purchase and sale of a Product (each a "Transaction") between the Parties. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

**Part 1. GENERAL TERMS AND CONDITIONS**

**(a) Article One - General Definitions.**

- (1) Section 1.11, "Costs" is amended by adding the following sentence at the end of the current definition:

"The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

- (2) Section 1.51, "Replacement Price" shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".
- (3) Section 1.53, "Sales Price" shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".
- (4) Section 1.46, "Potential Event of Default" is deleted.
- (5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted]."
- (6) Section 1.59, "Termination Payment" is amended by deleting the phrase "Section 5.3" and inserting the phrase "Section 5.2".
- (7) Section 1.62, "Fund" shall be added to the Agreement as follows:

**"Fund"** means the Department of Water Resources Electric Power Fund as established by Section 80200 of the Water Code.

(8) Section 1.63, **"Market Quotation Average Price"** shall be added to the Agreement as follows:

**"Market Quotation Average Price"** shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

(9) Section 1.64 **"Market Value"** shall be added to the Agreement as follows:

**"Market Value"** shall have the meaning set forth in Section 5.3

(10) Section 1.65, **"Per Unit Market Price"** shall be added to the Agreement as follows:

**"Per Unit Market Price"** means the applicable price per MWh determined in accordance with Section 5.3

(11) Section 1.66, **"Reference Market-maker"** shall be added to the Agreement as follows:

**"Reference Market-maker"** means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor and Baa2 or better by Moody's Investor Services, Inc., or its successor.

(12) Section 1.67, **"Replacement Contract"** shall be added to the Agreement as follows:

**"Replacement Contract"** means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

(13) Section 1.68, **"2001A Transaction"** shall be added to the Agreement as follows:

**"2001A Transaction"** means the Transaction described in the attached System Contingent Capacity Purchase and Sales Agreement dated March 2, 2001.

(14) Section 1.69, **"Trust Estate"** shall be added to the Agreement as follows:

**"Trust Estate"** means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.



**(b) Article Two - Transaction Terms and Conditions.**

- (1) Section 2.1, "Transactions" shall be amended by deleting the first sentence in its entirety and replacing it with the following in lieu thereof:

"Each Transaction shall be in writing and this Agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5."

- (2) Section 2.2, "Governing Terms" shall be amended by adding the following sentence at the end thereof:

"Notwithstanding the foregoing, the 2001A Transaction shall be treated as a stand-alone Transaction and accordingly, (a) provisions in the Master Agreement referring to the offsetting or netting of multiple Transactions shall not be applicable to the 2001A Transaction, and (b) an Event of Default or Potential Event of Default with respect to any Transaction other than the 2001A Transaction shall not affect the 2001A Transaction. Except for the attached System Contingent Capacity Purchase and Sales Agreement dated March 2, 2001, no provision of any Confirmation entered into pursuant to Section 2.4 shall affect the 2001A Transaction.

**(c) Article Five - Events of Default; Remedies.**

- (1). Section 5.2, "Declaration of an Early Termination Date and Calculation of Settlement Amounts" shall have the last sentence deleted in its entirety and shall be replaced with the following in lieu thereof:

"The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3, which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

- (2). Section 5.2, "Declaration of an Early Termination Date and Calculation of Settlement Amounts" shall be amended by adding the following sentences at the end thereof:

"Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3). Section 5.3, "Net Out of Settlement Amounts" shall be amended by deleting it in its entirety and replacing it with the following in lieu thereof:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case where Party B is the Non-Defaulting Party, the present value of the positive difference, if any of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case where Party A is the Non Defaulting Party, the present value of the positive difference, if any of (A) payments under this Agreement and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of the termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information; provided, however, that with respect to the portion of the 2001A Transaction pertaining to System Contingent Capacity and Energy, if no Per Unit Market Price of a Replacement Contract is ascertainable using the methodology provided for in this sentence, the Parties shall negotiate in good faith to agree upon an independent third party that will make a binding determination of the Per Unit Market Price of a Replacement Contract for the portion of the 2001A Transaction pertaining to System Contingent Capacity and Energy.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in sub-paragraph (b); provided, however, that with respect to the portion of the 2001A Transaction pertaining to System Contingent Capacity and Energy, if no Per Unit Market Price of a Replacement Contract is ascertainable using the methodology provided for in this sentence, the Parties shall

negotiate in good faith to agree upon an independent third party that will make a binding determination of the Per Unit Market Price of a Replacement Contract for the portion of the 2001A Transaction pertaining to System Contingent Capacity and Energy.

- (d) In no event, however, shall a Party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

(4) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]".

**(d) Article Ten – Miscellaneous.**

- (1) Section 10.1, "Term of Master Agreement" is amended by adding the following sentence to the end thereof:

"The 2001A Transaction shall terminate on the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default."

- (2) Section 10.2, "Representations and Warranties" is amended by adding the following sentence to the end thereof:

"Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) herein."

- (3) Section 10.4, "Indemnity" is amended by adding the phrase "To the extent permitted by law" to the first two sentence of that section.

- (4) Section 10.5, "Assignment" is amended by deleting the phrase "either Party may, without the consent of the other Party (and without relieving itself from liability hereunder)" and replacing it with the phrase "Party A (or, with respect to clause (i), (iv) or (v), Party B) may, without the consent of the other Party".

- (5) Section 10.5, "Assignment" is hereby amended by adding the following clauses (iv) and (v) at the end thereof:

"(iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another newly created governmental entity ("New Entity") created or designated by law solely to carry out the rights, powers, duties and obligations of the Department under the Act, provided that (a) such New Entity shall have, by enabling legislation, the same rights, powers, and privileges afforded to Party B under the Act and no greater liabilities than Party B has relating to the purchase and sale of power pursuant to Division 27 of the CWC, (b) such New Entity shall have the same rights and powers in relation to and against other governmental entities and agencies of the State of California, including by way of example and not limitation the right to require the California Public Utilities Commission ("CPUC")

to approve rate increases necessary to ensure payment of the revenue requirements of the New Entity, (c) such New Entity shall have the same legal and equitable rights against non-governmental agencies, including by way of example and not limitation contractual rights against electrical corporations, as defined in the Act, and other entities involved in the marketing, selling, transmission or distribution of power and invoicing and collection of accounts receivable in connection with the sale of power and (d) Party B shall cause to be delivered to Party A such opinion letters concerning the enforceability of this Agreement against the New Entity, the other matters covered by the opinion letter(s) provided to Party A in connection with the execution of this Agreement, compliance with the assignment restrictions set forth herein and such other matters as Party A reasonably requests, or (v) transfer or assign this Agreement to any electrical corporation, as defined by the Act, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, Inc., or its successor both before and after giving effect to the assignment; provided that, with respect to each assignment contemplated by the foregoing clauses (i) through (v), such assignee executes appropriate assignment documents, including without limitation the then applicable Edison Electric Institute Master Power Purchase and Sale Agreement, with such revisions, addenda, additional terms and provisos, including without limitation reasonable credit protection terms appropriate to the circumstances, as the non-assigning Party desires in the good faith and reasonable exercise of its discretion, under the then applicable circumstances and in light of the identity of the proposed assignee; provided that the assigning Party shall first give the non-assigning Party at least thirty (30) days notice of any proposed assignment and shall include in such notice written evidence that the proposed assignment complies with the above restrictions. Any purported assignment in violation of the aforementioned restrictions shall be null and void; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof or execute the documents referred to above."

- (5) Section 10.6, "Governing Law" is amended by replacing "New York" on the fourth line with "California".
- (6) Section 10.8, "General" is amended by deleting the phrase "Except to the extent herein provided for," from the fourth sentence and adding the phrase, "and this Agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" at the end of such fourth sentence.
- (7) Section 10.11, "Confidentiality" is amended by adding the following proviso to the end of the first sentence thereof:

"provided, further, that either Party may publicly disclose the type and quantity of Product(s), the pricing of such Product(s) and the term of the 2001A Transaction provided that such disclosure is only made (i) in an aggregated form such that the terms applicable to Party A cannot be directly or indirectly identified, and (ii) in a form that is approved by the other Party, which approval shall not be withheld unreasonably."

- (8) Section 10.12, "No Retail Services; No Agency" shall be added to the Agreement as follows:

(a) Nothing contained in this Agreement shall grant any rights or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

## **Part II. SCHEDULE M**

**Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80114, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code.

(2) "Special Fund" will mean the Fund.

(3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "'Governmental Entity' means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).

(4) In Section D, delete Section 3.5 and replace it with the following:

"3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court."

(5) In Section G, specify that the laws of the State of California will apply.

(6) Add a new Section H, which shall read as follows:

"3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

(7) Add a new Section I, which shall read as follows:

"3.8. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by

Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.

- (8) Add a new Section J, which shall read as follows:

"3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A."

- (9) Add a new Section K, which shall read as follows:

"3.10. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

- (10) Add a new Section L, which shall read as follows:

"3.11. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement."

(11) Add a new Section M, which shall read as follows:

"3.12. No More Favorable Cross-Default Provision or Payment Terms. Party B shall not offer to any other party to a power purchase agreement any cross-default provisions more favorable than those pertaining to Transaction 2001A without offering such provisions to Party A. Party B shall not offer to any other party to a power purchase agreement having a term of four years or more payment periods that are shorter than the payment periods set forth in Section 6.2 of the EEI Agreement without offering such provisions to Party A"

(12) Add a new Section N, which shall read as follows:

"3.13. Payment of Operating Expenses. Upon the occurrence and continuation of a payment default with respect to any bonds issued by Party B, all moneys constituting part of the Trust Estate shall first be applied to pay in full all operating expenses of the Fund currently due and payable, including all termination and other payments due and payable under any power or gas purchase agreements.

## **SYSTEM CONTINGENT CAPACITY PURCHASE AND SALES AGREEMENT**

This SYSTEM CONTINGENT CAPACITY PURCHASE AND SALES AGREEMENT ("Agreement") is made and entered into as of the date set forth below, by and between the Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("CDWR"), an agency of the State of California, and Dynegy Power Marketing, Inc., acting as agent for Cabrillo Power I LLC, El Segundo Power LLC, and Long Beach Generation LLC ("DPMI"). CDWR and DPMI may be referred to herein individually as a "Party" or collectively as the "Parties". Except as provided herein, this Agreement shall be governed by the terms and conditions of Version 2.1 (modified 4/25/00) of the EEI-NEM Master Power Purchase and Sales Agreement executed by the Parties on March 2, 2001 (DPMI Contract No. 7774) ("EEI Agreement"), the terms and conditions of which are incorporated herein by this reference, and shall function as a Confirmation as defined therein. Any conflicts between this Agreement and the EEI Agreement shall be resolved in favor of this Agreement.

DPMI and CDWR agree as follows:

**1. Definitions:** Capitalized terms used but not defined herein shall have the meanings ascribed to them in this Section 1 or in the EEI Agreement.

"CAISO" means the California Independent System Operator or its successor.

"CAISO Firm Energy" means energy without Ancillary Services (as defined in the CAISO Tariff) that is or will be scheduled as a Scheduling Coordinator to Scheduling Coordinator transaction pursuant to the applicable tariff and protocol provisions of the CAISO Tariff for which the only excuse for failure to deliver or receive is a "CAISO Uncontrollable Force" as defined in the CAISO Tariff in effect as of the Commencement Date.

"CAISO Firm Energy Baseload Hour" means any hour ending 0100 PPT through and including any hour ending 2400 PPT, Monday through and including Sunday including any holiday recognized by NERC.

"CAISO Firm Energy On Peak Hour" means any hour ending 0700 PPT through and including any hour ending 2200 PPT, Monday through and including Saturday, excluding Sunday and any holiday recognized by NERC.

"CAISO Tariff" means the CAISO FERC Electric Tariff or any successor document.

"Commencement Date" means March 6, 2001.

"Contract Quantity" shall mean the quantity of System Contingent Capacity and Energy or CAISO Firm Energy specified below in Section 3.

"Delivery Point" means the congestion zone SP 15 as defined in the CAISO Tariff, or the successor congestion zone that most closely resembles the current zone SP 15.



“Default Fuel Commodity Component” means a price equal to the highest price in the range under the column entitled “Absolute” adjacent to the entry for “SoCal gas, large pkgs” (which applies to deliveries at Topock, Daggett, Blythe, Needles and Ehrenberg) that is published in *Gas Daily* on the day gas flows or, if gas flows on a Saturday, Sunday or a holiday, *Gas Daily* publication date immediately following such gas flow day(s); provided, however, that if the index specified above is no longer published or fails to accurately reflect the spot price of natural gas at the delivery location referenced therein, the Parties shall negotiate in good faith to agree upon a replacement index or pricing methodology that accurately reflects the spot price of natural gas at the delivery location referenced therein.

“EEI Agreement” has the meaning set forth in the introductory paragraph of this Agreement.

“Environmental Upgrades” means the installation of additional pollution control equipment or upgrading of existing pollution control equipment at the Specified Units (including, without limitation, installing selective catalytic reduction emission control systems).

“Environmental Upgrade Expenses” expenses incurred as a result of Environmental Upgrades.

“Force Majeure” has the meaning ascribed thereto in Section 7 below, notwithstanding anything to the contrary in Section 1.23 of the EEI Agreement.

“Fuel Costs” means the sum of (i) the product of the Fuel Price, the Heat Rate, and the applicable System Contingent Energy, (ii) the positive difference, if any, between the Fuel Price and the price at which DPMI is able to resell such fuel in the event such fuel is not utilized at a Specified Unit due to a Specified Unit Outage, an event of Force Majeure, or CDWR’s failure to take System Contingent Energy hereunder multiplied by the applicable quantity of fuel, (iii) the product of (a) the price, as set forth in the Southern California Gas Company Gas Tariff (or any successor tariff) for transporting fuel to the applicable Specified Unit, (b) the Heat Rate, and (c) the applicable System Contingent Energy quantities (to the extent such transportation expenses are not explicitly included in the Spot Fuel Commodity Component or the Term Fuel Commodity Component), and (iv) any imbalance charges pursuant to Southern California Gas Company Gas Tariff GIMB Rate Schedule (or its successor), scheduling fees, storage fees, Taxes or similar expenses DPMI or its affiliates reasonably incur in delivering or managing fuel hereunder.

“Fuel Price” means an amount equal to the Spot Fuel Commodity Component or the Term Fuel Commodity Component, as applicable.

“Heat Rate” means 11.25 MMBtu/MWH.

“NERC” means the North American Electric Reliability Council, or any successor to its functions.

“O&M Costs” means the product of the O&M Fee specified below for the applicable year and the quantity of MWH of System Contingent Energy delivered hereunder during that year.

<u>O&amp;M Fee</u>	<u>Year</u>
\$1.35	2001
\$1.40	2002
\$1.45	2003
\$1.50	2004

“PPT” means Pacific Prevailing Time.

“Priority Obligations” means obligations to provide energy from the Specified Units (i) to third parties pursuant to firm supply obligations in existence as of the Commencement Date, (ii) to the CAISO pursuant to Reliability Must-Run Service Agreements, and (iii) to CDWR pursuant to obligations herein to supply CAISO Firm Energy.

“Pro Rata Share” means a percentage that reflects the ratio of (i) the amount of time remaining in the Term at the time the Environmental Upgrade Expense is made, to (ii) the amortized economic useful life of an Environmental Upgrade Expense.

“Prudent Utility Practice” means those practices, methods and procedures, as modified from time to time, that are currently and commonly used in electric utilities to design, engineer, select, construct, operate, and maintain electric power facilities and equipment dependably, reliably, safely, efficiently, and economically, with due regard to the state-of-the-art in the electric power industry, as applied in the WSPP/WSCC area.

“Schedule Constraint Costs” means the generation deviation cost DPPI incurs from the CAISO due to restrictions in CAISO scheduling in rescheduling System Contingent Energy as a result of a Specified Unit Outage or an event of Force Majeure.

“Scheduling Coordinator” has the meaning ascribed thereto in the CAISO Tariff. For the term of this Agreement, DPPI shall use Scheduling Coordinator ECH1 and CDWR shall use Scheduling Coordinator CERS.

“Specified Unit Outage” means the inability of any of the Specified Units to generate energy due to equipment failures, limitations or events of Force Majeure.

“Specified Units” means the existing generating assets owned by Cabrillo Power I LLC, El Segundo Power, LLC and Long Beach Generation LLC, except to the extent that DPPI, in its sole discretion, determines that continued operation of such generating assets is no longer economically viable and therefore decommissions such generating assets.

“Spot Fuel Commodity Component” means a price agreed to by DPMI and CDWR for the fuel necessary to generate System Contingent Energy scheduled by CDWR hereunder; provided, however, that if CDWR and DPMI are not able to agree upon such a price by 07:30 PPT a.m. on the Business Day applicable to the regular industry scheduling of natural gas, the Fuel Commodity Price shall equal the Default Fuel Commodity Component.

“Start” means the ignition of a Specified Unit that is necessary, in DPMI’s commercially reasonable opinion, to generate System Contingent Energy hereunder.

“Start Costs” means the sum of (i) the product of the Spot Fuel Commodity Component and the fuel volume for the applicable Specified Unit specified in Appendix A, (ii) the product of the fuel volume for the applicable Specified Unit specified in Appendix A and the price as set forth in the Southern California Gas Company Gas Tariff (or any successor document) for transporting the said fuel to the applicable specified unit, and (iii) the product of the applicable utility tariff rate and the power quantity for the applicable Specified Unit specified in Appendix A.

“System Contingent Capacity” means generating capacity and the right to call on an equivalent amount of System Contingent Energy from the Specified Units subject to the partial or total unavailability of the Specified Units due to a Specified Unit Outage or an event of Force Majeure.

“System Contingent Energy” means energy derived from System Contingent Capacity, the availability of which is subject to the availability of the Specified Units due to a Specified Unit Outage or an event of Force Majeure, or, at DPMI’s option, from any other source.

“System Contingent Energy Off Peak Hour” means any hour that is not a System Contingent Energy On Peak Hour.

“System Contingent Energy On Peak Hour” means any hour ending 0700 PPT through and including any hour ending 2200 PPT, Monday through and including Sunday and any holiday recognized by NERC.

"Taxes" shall mean any or all *ad valorem*, property, occupation, severance, emissions, generation, first use, conservation, BTU or energy, transmission, utility, gross receipts, privilege, sales, use, excise and other taxes, governmental charges, licenses, fees, permits and assessments, other than taxes based on net income or net worth.

“Term Fuel Commodity Component” means a fuel price agreed to by DPMI and CDWR, or the Third Party Fuel Price, for delivery during periods of thirty days or greater for the fuel necessary to generate System Contingent Energy to be delivered and received hereunder.

“Third Party Fuel Price” has the meaning set forth in Section 4.E.

“WSPP/WSCC” means the Western Systems Power Pool/Western Systems Coordinating Council or their successors.

## **2. Term**

This transaction shall commence on the Commencement Date and remain in effect through December 31, 2004 unless terminated earlier as provided for herein or in the EEI Agreement ("Term"). DPMI may, in its sole discretion and for any reason whatsoever, terminate this Agreement without penalty effective as of June 1, 2001 by giving CDWR notice to that effect by no later than May 15, 2001. The exercise of this termination right shall neither constitute nor trigger an Event of Default, as defined in the EEI Agreement.

## **3. System Contingent Capacity and Energy**

A. For the period beginning on the Commencement Date and ending on December 31, 2001, DPMI shall sell and deliver, and CDWR shall purchase and receive:

- a) 1000 MW of System Contingent Capacity and Energy during System Contingent Energy On Peak Hours, plus
- b) 200 MW of System Contingent Capacity and Energy during System Contingent Energy Off Peak Hours.

B. For the period beginning January 1, 2002 and ending December 31, 2004, DPMI shall sell and deliver, and CDWR shall purchase and receive:

- a) 200 MW CAISO Firm Energy during CAISO Firm Energy Baseload Hours, plus
- b) 600 MW CAISO Firm Energy during CAISO Firm Energy On Peak Hours, plus
- c) a minimum quantity of 500 MW and a maximum quantity of 1500 MW of System Contingent Capacity and Energy during System Contingent Energy On Peak Hours, plus
- d) a minimum quantity of 200 MW and a maximum quantity of System Contingent Energy 1500 MW of System Contingent Capacity and Energy during Off Peak Hours.

C. DPMI shall deliver all CAISO Firm Energy and System Contingent Energy to the Delivery Point.

D. DPMI shall (i) maintain the Specified Units in accordance with Prudent Utility Practice, (ii) exercise commercially reasonable efforts to ensure that scheduled maintenance will be done during off-peak hours, and (iii) provide CDWR with reasonable notice of such scheduled maintenance.

## **4. Pricing**

A. The price for CAISO Firm Energy provided hereunder shall be \$119.50/MWH.

B. The capacity payment for System Contingent Capacity shall be the product of \$20.25

("Capacity Payment") and the quantity of MWH of System Contingent Energy delivered hereunder. In addition, in connection with System Contingent Energy DPMI delivers hereunder, CDWR shall pay DPMI for (i) Fuel Costs, (ii) O&M Costs, and (iii) Start Costs. In the event of a Specified Unit Outage or event of Force Majeure that affects the delivery or receipt of System Contingent Energy, CDWR shall be liable to DPMI for all Schedule Constraint Costs. Except to the extent DPMI fails to deliver System Contingent Energy CDWR schedules hereunder, CDWR shall be liable to DPMI for the product of (i) the Capacity Payment and (ii) the sum of (a) the minimum System Contingent Energy quantity (in MWH) and (b) any additional quantities of System Contingent Energy CDWR schedules hereunder, regardless of whether CDWR takes any such System Contingent Energy. Absent an unexcused failure to deliver by DPMI, if CDWR fails to take, for any reason including without limitation a Specified Unit Outage or an event of Force Majeure, the minimum System Contingent Energy quantity and/or any additional quantities of System Contingent Energy CDWR schedules, CDWR shall be liable to DPMI for the disposition costs of Fuel Costs associated with the fuel DPMI arranged for delivery in reliance on CDWR's obligation to take as well as any Start Costs incurred as a result of CDWR's failure to take.

C. DPMI and CDWR intend that DPMI and its specified affiliates shall not suffer the effects of any costs or restrictions imposed by environmental agencies whenever incurred that are associated with providing CAISO Firm Energy and System Contingent Capacity and Energy. DPMI and CDWR recognize and agree that DPMI's Priority Obligations hereunder have utilized DPMI's entire emissions for 2001. Accordingly the energy supplied pursuant to this Agreement by DPMI during 2001 may cause the Specified Units to exceed applicable emissions limits. DPMI and CDWR agree that any and all costs associated with exceeding such limits shall be borne exclusively by CDWR. DPMI and CDWR further recognize and agree that DPMI's available emission allocations and restrictions for 2002 and throughout the Term of the Agreement are insufficient for DPMI to meet the performance obligations hereunder. CDWR hereby agrees to pay any and all costs associated with exceeding applicable emissions limitations to the extent such are attributable to the performance of this Agreement during that period. At any time prior to June 1, 2001, DPMI may terminate the System Contingent Capacity and Energy portion of this transaction (effective one Business Day after CDWR receives written notice to that effect) if, DPMI, in its sole discretion, determines that the costs and restrictions associated with environmental compliance are not fully resolved to DPMI's satisfaction; provided, however, that, regardless of whether DPMI exercises this termination right, CDWR shall pay DPMI (within ten Business Days of receiving an invoice therefor) an amount equal to any costs imposed by environmental agencies as a result of the provision of capacity or energy by DPMI to CDWR. The exercise of this termination right shall neither constitute nor trigger an Event of Default, as defined in the EEI Agreement. In addition, if performing in accordance with this Agreement will restrict the ability of DPMI or its affiliates to generate electricity during or beyond the Term, CDWR shall provide DPMI with energy in quantities sufficient, and at appropriate times, to ensure that DPMI and its affiliates are kept whole financially with respect to such restrictions. Notwithstanding anything in this Section 4.C to the contrary, CDWR shall not be liable to DPMI for the amounts set forth in this Section 4.C to the extent such amounts are the result of DPMI's gross negligence or willful misconduct, it being understood that the performance by DPMI of this Agreement in a manner that will create such liability for CDWR shall not, in and of itself, constitute gross negligence or willful misconduct.

D. If DPMI or its affiliates are required to make Environmental Upgrades so that DPMI can supply the minimum quantity of System Contingent Energy hereunder and still be in compliance with any requirements of environmental agencies that currently exist or may exist during the term of this Agreement, CDWR shall, at its option, either (i) reimburse DPMI for CDWR's Pro Rata Share of any resulting Environmental Upgrade Expense; or (ii) reduce the minimum quantity of System Contingent Energy to a quantity that would obviate the requirement of any Environmental Upgrade Expenses. In addition, if Environmental Upgrade Expenses are required as a result of DPMI's provision of CAISO Firm Energy from the Specified Units, CDWR shall reimburse DPMI for a Pro Rata Share of any such Environmental Upgrade Expenses.

E. To the extent that CDWR schedules System Contingent Energy hereunder, DPMI or DPMI's affiliate Dynegy Marketing and Trade shall provide a corresponding amount of fuel based on the Heat Rate and be compensated therefor in accordance with this Agreement. At CDWR's request, DPMI and CDWR may agree to lock in a Fuel Price for the Term Fuel Commodity Component. In addition, upon sufficient notice to DPMI, CDWR may cause a third party to sell to DPMI a portion of the fuel necessary to generate System Contingent Energy scheduled by CDWR at a Fuel Price for the term Fuel Commodity Component that is acceptable to CDWR ("Third Party Fuel Price"); provided, however, that in such event, (i) the Third Party Fuel Price will equal the Fuel Price applicable to the fuel supplied by the third party; (ii) CDWR shall be liable to DPMI for the failure of the third party to perform in accordance with its delivery, payment and other contractual obligations to DPMI; and (iii) the third party shall deliver the fuel to an interconnection on the Southern California Gas Company pipeline. CDWR shall advise DPMI of the existence of and terms pertaining to any such arrangements with third parties immediately upon consummation thereof.

F. Notwithstanding anything herein or in the EEI Agreement to the contrary, in the event of any termination (including without limitation a termination under the provisions of Sections 2, 8.B or 8.H, or partial termination as provided for in Section 4.C above) (i) CDWR shall remain liable to DPMI for all amounts owed hereunder prior to such termination (including without limitation Fuel Costs, costs imposed by environmental agencies as a result of the provision of capacity or energy, and Environmental Expenses); and (ii) if, prior to any such termination, performing in accordance with this Agreement has restricted the ability of DPMI or its affiliates to generate electricity beyond the effective date of the termination, CDWR shall provide DPMI at DPMI's sole discretion with either (a) energy in quantities sufficient to ensure that DPMI and its affiliates are kept whole financially with respect to such restrictions, or (b) an amount necessary to keep DPMI whole financially with respect to such restrictions.

## **5. Scheduling**

By no later than 07:00 a.m. PPT, CDWR shall preschedule each hour for the following day(s) an amount of System Contingent Energy equal to the applicable minimum System Contingent Energy quantity for each hour DPMI is obligated to provide System Contingent Energy hereunder. In addition, CDWR may preschedule each hour for the following day(s) additional quantities of System Contingent Energy in 50 MW blocks on a day-ahead basis such that the total quantity scheduled does not exceed the maximum System Contingent Energy quantity

applicable to any hour. CDWR shall schedule this transaction as a Scheduling Coordinator to Scheduling Coordinator transaction in accordance with WSPP/WSCC scheduling guidelines, the CAISO Tariff protocols and practices, and applicable industry scheduling practices. In the event of curtailment or interruption of the delivery or receipt of System Contingent Energy hereunder, CDWR and DPMI shall implement any required scheduling changes to the System Contingent Energy as soon as reasonably practicable in accordance with WSPP/WSCC scheduling guidelines, the CAISO Tariff protocols and practices, and applicable industry scheduling practices. DPMI shall use commercially reasonable efforts to ensure that the ramp rate shall range between three megawatts per minute and fifteen megawatts per minute.

## **6. Remedies for Failure to Perform**

A. CAISO Firm Energy. The sole remedies for a Party's unexcused failure to deliver or receive CAISO Firm Energy shall be those remedies set forth in Article Four of the EEI Agreement.

B. System Contingent Capacity and Energy. Notwithstanding anything in this Agreement or the EEI Agreement to the contrary, CDWR's sole remedy in the event of DPMI's failure to deliver System Contingent Energy scheduled by CDWR hereunder shall be a corresponding reduction in the quantity of MWH the Capacity Payments owing hereunder are applicable to. Except as set forth in the preceding sentence, in no event shall DPMI be liable to CDWR for any damages, penalties, fees or similar expenses for failure to perform its obligation to deliver and sell System Contingent Energy hereunder, including without limitation those damages set forth in Article 4 of the EEI Agreement. In addition, CDWR acknowledges that DPMI has Priority Obligations. DPMI shall serve those Priority Obligations prior to serving its obligations to provide System Contingent Energy hereunder, and in order of priority set forth in the definition thereof.

## **7. Force Majeure**

No party shall be considered to be in breach of this Agreement, or liable to the other party for any damages or reduction in capacity payments, to the extent that a failure to perform its obligations under this Agreement shall be due to an event of Force Majeure. The term "Force Majeure" means any cause beyond the control of the party affected, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, failure of firm transmission upstream of the Delivery Point, inability to deliver natural gas to the Specified Units due to curtailments by transporting pipelines, scheduled and unscheduled outages at the Specified Units, mechanical or equipment failure at the Specified Units, restraint by court order or public authority, and action or non-action by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority (including without limitation the imposition of fines, penalties or other restrictions on the Specified Units by environmental or other regulatory agencies), which by exercise of due diligence such party could not reasonably have been expected to avoid and to the extent which by exercise of due diligence it has been unable to overcome. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to

removable or remediable causes that it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a party to settle any strike or labor dispute in which it may be involved. Any party rendered unable to fulfill any of its obligations by reason of an event of Force Majeure shall give prompt notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice. Notwithstanding the foregoing, (i) the definition of Force Majeure shall not apply to the Parties obligations with respect to CAISO Firm Energy, and (ii) an event of Force Majeure or "Uncontrollable Force" as defined in the CAISO Tariff in effect as of the Commencement Date shall not be based on (a) the loss of CDWR's markets; (b) CDWR's inability economically to use or resell the CAISO Firm Energy or System Contingent Capacity or Energy purchased hereunder; or (c) DPMI's ability to sell CAISO Firm Energy or System Contingent Energy at a price greater than the price provided hereunder. Neither Party shall be relieved by operation of this Section 7 of any liability to make payments when due.

## **8. Credit**

A. CDWR represents and warrants that it has not granted and covenants that it shall not grant any lien, security interest, pledge or other right, title or interest in the "fund" created pursuant to CWC 80200 ("CDWR Fund") or in the accounts receivable generated by the CDWR in connection with activities of the CDWR authorized by Division 27 of the CWC (together, the "Bondholder Collateral"), except that CDWR may grant a security interest in the Bondholder Collateral to secure its obligations under any bonds and bond indentures issued or executed pursuant to Division 27 of the CWC.

B. In addition to any other termination rights herein, DPMI shall have the right, but not the obligation, to terminate this Agreement without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either DPMI or CDWR, upon the occurrence of either of the following: (a) CDWR fails, on or before July 1, 2001, (i) to issue the bonds in accordance with Sections 80130, 80132 and 80134 of the Water Code ("Bonds"), and (ii) to obtain a rating on the Bonds of either Baa3 or better by Moody's, or BBB- or better by S&P; or (b) CDWR fails to maintain at least one of said ratings on the Bonds at all times thereafter and such failure continues for thirty or more consecutive days. If CDWR determines for any reason not to issue the Bonds, and CDWR gives DPMI written notice of such determination on or before July 1, 2001, the foregoing sentence shall not apply and instead, in addition to any other termination rights herein, DPMI shall have the right, but not the obligation, to terminate this Agreement without recourse for any Termination Payment or other costs and without any further obligation or liability of either DPMI or CDWR, upon the occurrence of either of the following: (a) CDWR's failure, on or before July 1, 2001, to obtain a rating based on the ability of the Fund to pay its obligations under the Agreement of either Baa3 or better by Moody's, or BBB- or better by S&P, or (b) CDWR's failure to maintain at least one of said ratings at all times thereafter and such failure continues for thirty or more consecutive days. In the event DPMI has the right to terminate this Agreement pursuant to this Section 8.B, DPMI may elect not to terminate this Agreement and in such event, notwithstanding the provisions of Section 6.2 of the EEI Agreement, DPMI may invoice CDWR for all amounts owing as of the



date DPMI could otherwise terminate in accordance with this Section 8.B and thereafter no more than one time per week and CDWR shall pay all invoices within five days of receipt thereof.

C. Until such time as CDWR has performed all of its obligations under this Agreement, CDWR shall remain continuously engaged in the business of buying and selling power at such times, in such amounts and at such prices that are sufficient to enable it to perform all of its obligations not only under this Agreement but also under all bonds it has issued and under all power purchase agreements which it has entered into pursuant to Division 27 of the CWC. The obligation set forth in the immediately preceding sentence shall hereinafter be referred to as the "Duty of Continuous Operation." It shall not be a breach of the Duty of Continuous Operation if CDWR ceases to remain so engaged after it first assigns its rights and duties under this Agreement to an assignee to which CDWR may assign, consistent with the assignment provisions of the EEI Agreement, as modified.

D. CDWR shall, on an annual basis, establish and revise its "revenue requirement" within the meaning of CWC §§ 80110 and 80134 and it shall do so reasonably and in good faith so as to insure that it shall at all times have funds sufficient to provide in a timely fashion all funding and payments enumerated in CWC § 80134 (a)(1)-(6), including without limitation all payments then due or to become due to DPMI under this Agreement, and CDWR shall promptly after each such establishment and revision notify the commission of its revenue requirement pursuant to CWC § 80134(b). The obligations set forth in the immediately preceding sentence shall hereinafter be referred to as the "Duty to Determine Revenue Requirement." It shall not be a breach of the Duty to Determine Revenue Requirement if CDWR fails to establish, revise or report such revenue requirement after it first assigns its rights and duties under this Agreement to an assignee to which CDWR may assign, consistent with the assignment provisions of the EEI Agreement, as modified.

E. It is acknowledged and agreed that, if CDWR breaches either its Duty of Continuous Operation or its Duty to Determine Revenue Requirement, DPMI's remedies at law shall not be adequate to compensate DPMI fully and that, therefore, in addition to all other remedies to which it might be entitled at law or equity, DPMI shall be entitled to preliminary and permanent mandatory injunctive relief, specifically enforcing CDWR's duties in this regard.

F. CDWR hereby acknowledges and agrees that all payments to DPMI hereunder, including without limitation all payments for CAISO Firm Energy and System Contingent Capacity and Energy, liquidated damages payments, termination payments, environmental charges specified in Section 4 above, including without limitation Environmental Upgrade Expenses, are "just and reasonable" within the meaning of section 451 of the Public Utilities Code and that CDWR shall not take any action or fail to take any action which is inconsistent with the just and reasonable nature of such payments. Without limiting the generality of the foregoing, CDWR shall include all such payments to DPMI, in their full amount, in every calculation, report or determination it makes of its revenue requirement pursuant to Division 27 of the CWC, including without limitation its reports and advice of same to the commission.

G. CDWR shall upon request provide DPMI with the initial feasibility study used by DPMI in connection with the marketing of the initial series of long term Bonds and such other disclosure and other documentation as DPMI may reasonably request.

H. DPMI shall have the right, but not the obligation, to terminate this Agreement without recourse for any Termination Payment and without any further obligation or liability of either Party A or Party B not later than the earlier of (i) July 1, 2001 or (ii) the date of the preliminary offering document of CDWR relating to the initial issuance of bonds under CWC § 80200 if prior to such date CDWR has not provided forms of legal opinions in form and substance reasonably acceptable to DPMI from the Attorney General of the State of California addressing enforceability and opinions of counsel addressing matters pertaining to CDWR's ability to charge rates sufficient to meet its revenue requirements and such other matters DPMI may reasonably request. CDWR shall provide at least seven days' notice of issuance of such preliminary offering document.

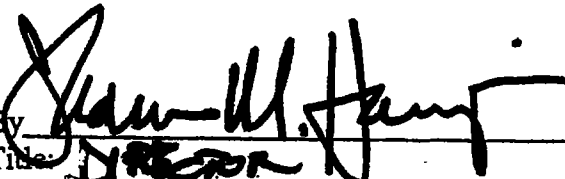
9. **Entirety**

This Agreement, together with the EEI Agreement, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any other agreements, written or oral, between the parties concerning such subject matter.

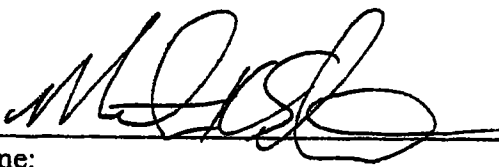
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Dated: March 2, 2001

DEPARTMENT OF WATER RESOURCES,  
separate and apart from its powers and  
responsibilities with respect to the  
State Water Resources Development System

By   
Title: Director

DYNEGY POWER MARKETING, INC., acting as  
agent for Cabrillo Power I LLC, El Segundo Power  
LLC, and Long Beach Generation LLC

By   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_ HEM

## START COST CALCULATION

### REQUIREMENTS

<b><u>UNIT</u></b>	<b>Fuel (MMBtu)</b>	<b>Power (MWhs)</b>
El Segundo 1	2527	76
El Segundo 2	2527	76
El Segundo 3	4518	180
El Segundo 4	4518	180
Encina 1	768	32
Encina 2	768	32
Encina 3	768	32
Encina 4	1514	93
Encina 5	1678	106
Long Beach <sup>1</sup>	500	50

<sup>1</sup> Per Unit